

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Theo Kaufman	Team: Squad #6	CCRB Case #: 202202141	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 04/04/2022 2:20 PM	Location of Incident: § 87(2)(b) § 87(2)(b)	Precinct: 112	18 Mo. SOL 10/4/2023	EO SOL 10/4/2023	
Date/Time CV Reported Tue, 04/05/2022 1:18 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Tue, 04/05/2022 1:18 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. PO Marco Libongco	10478	938858	112 PCT
2. Officers			
3. PO Joanna Derkacz	22282	968753	112 PCT

Officer(s)	Allegation	Investigator Recommendation
A. PO Joanna Derkacz	Abuse: Police Officer Joanna Derkacz entered § 87(2)(b) § 87(2)(b) in Queens.	§ 87(2)(b)
B. Officers	Abuse: Officers forcibly removed § 87(2)(b) to the hospital.	§ 87(2)(b)
C. PO Marco Libongco	Abuse: Police Officer Marco Libongco threatened § 87(2)(b) with the use of force at § 87(2)(b) § 87(2)(b) in Queens.	§ 87(2)(b)
D. PO Marco Libongco	Abuse: Police Officer Marco Libongco threatened § 87(2)(b) with the use of force in the lobby of § 87(2)(b) § 87(2)(b) in Queens.	§ 87(2)(b)

Case Summary

On April 5, 2022, § 87(2)(b) submitted this complaint to CCRB via the call processing system.

On April 4, 2022, at approximately 2:13pm, PO Joanna Derkacz, PO Jordan Brandwein, PO Marco Libongco, Lt. Mohammad Ishrat and additional officers of the 112th Precinct responded to § 87(2)(b) in Queens, regarding a 911 call placed by § 87(2)(b) mother, § 87(2)(b) who does not live at the residence. The 911 Call alleged that § 87(2)(b) threatened to harm herself. PO Derkacz and PO Brandwein were the first to respond. PO Derkacz spoke with § 87(2)(b) and entered § 87(2)(b) (**Allegation A: Abuse of Authority: § 87(2)(g)** The remaining officers arrived, followed by EMS, who made the decision to take § 87(2)(b) to the hospital. § 87(2)(b) refused to go to the hospital and locked herself in the bathroom. § 87(2)(b) opened the door and officers pushed her out of the bathroom (**Allegation B: Abuse of Authority: § 87(2)(g)** PO Libongco pointed his Taser (CEW) at § 87(2)(b) and issued a laser warning (**Allegation C: Abuse of Authority: § 87(2)(g)** § 87(2)(b) left the apartment with the officers but refused to hand over her keys. In the lobby, PO Libongco pointed his Taser at § 87(2)(b) again, and issued a command to hand over her keys. (**Allegation D: Abuse of Authority: § 87(2)(g)** Officers obtained the keys, and § 87(2)(b) was removed to the hospital without further incident.

No arrests or summonses were issued as a result of this incident.

BWC was obtained and is located in IAs 34-39.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Joanna Derkacz entered § 87(2)(b) in Queens.

The EVENT Chronology shows that § 87(2)(b), § 87(2)(b) mother, called 911 alleging that § 87(2)(b) told her boyfriend that she was suicidal and was going to take extra pills to kill herself. The call additionally stated that § 87(2)(b) was alone at § 87(2)(b) and had turned off her phone. The EVENT notes § 87(2)(b) as not violent, without weapons or injuries, but suicidal (**BR 01**).

PO Brandwein's BWC shows that PO Brandwein and PO Derkacz were the first officers to arrive on scene. They approach § 87(2)(b) and knock on the door as Lt. Ishrat and PO Libongco arrive. At timestamp 2:27, § 87(2)(b) opens the door. PO Derkacz asks to speak with § 87(2)(b). At timestamp 2:45, PO Derkacz asks if § 87(2)(b) is okay and asks to enter the apartment. § 87(2)(b) asks why the officers are there, and PO Derkacz explains that § 87(2)(b) mother is concerned for her health. At timestamp 3:00, PO Derkacz tells § 87(2)(b) that the officers have to make sure that § 87(2)(b) is fine and again asks if they may enter the apartment. At timestamp 3:11, § 87(2)(b) opens the door wider, and PO Derkacz enters, with the remaining officers following her inside shortly afterwards (**BR 02**).

§ 87(2)(b) testified that on the night of April 3, 2022, she and her ex-boyfriend were involved in a verbal dispute. § 87(2)(b) ex-boyfriend left the apartment and § 87(2)(b) later spoke with him over the phone. After their phone conversation, he continued to call § 87(2)(b) and she disconnected her phone as she did not want to speak with him. On April 4, 2022, at approximately 2:20pm, § 87(2)(b) awoke to the sound of her doorbell ringing. § 87(2)(b)

opened the door and saw PO Derkacz and PO Brandwein. PO Derkacz asked § 87(2)(b) when she last saw her ex-boyfriend and asked to enter the apartment. § 87(2)(b) opened the door wider. PO Derkacz entered the apartment and signaled for PO Brandwein to enter. § 87(2)(b) said that she did not want any men in her house, and PO Derkacz responded that she could not enter alone. PO Brandwein entered the apartment. § 87(2)(b) spoke with PO Derkacz about her mental health, and EMS arrived shortly after (BR 06).

No other civilians were present at § 87(2)(b) home for the duration this allegation, and thus were not interviewed.

PO Libongco testified that § 87(2)(b) allowed the officers to enter the apartment but could not recall if any officers requested entry from § 87(2)(b) (BR 07).

Other officers were not interviewed in regards to this allegation as any additional testimony would not have altered the disposition. Although several officers entered the apartment, the allegation is plead to PO Derkacz as she was the first officer to enter into conversation with § 87(2)(b) and request to enter the apartment.

According to the emergency doctrine exception, the three criteria justifying a warrantless entry are 1) reasonable grounds to believe an emergency is at hand and an immediate need to protect life, 2) the search must not be primarily motivated by intent to arrest or to seize evidence, and 3) there must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched. People v. Doll, 21 N.Y.3d 665 (2013) (BR 08).

The EVENT chronology documents that § 87(2)(b) mother called 911 believing her daughter to have been suicidal, specifically noting that § 87(2)(b) said she was going to take extra pills and kill herself. BWC shows that PO Derkacz asked § 87(2)(b) to enter the apartment in order to make sure § 87(2)(b) was okay, and § 87(2)(b) opened the door wider, allowing PO Derkacz to enter § 87(2)(g)

§ 87(2)(g)

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Allegation (B) Abuse of Authority: Officers forcibly removed § 87(2)(b) to the hospital.

Allegation (C) Abuse of Authority: Police Officer Marco Libongco threatened § 87(2)(b) with the use of force at § 87(2)(b) § 87(2)(b) in Queens.

The EVENT Chronology notes that § 87(2)(b) was designated as an EDP and suicidal, prior to officers arriving on scene (BR 01).

PO Cosgrave prepared AIDED § 87(2)(b) which states that § 87(2)(b) expressed suicidal ideation via medical overdose to her ex-boyfriend (BR 15).

PO Cosgrave's BWC shows that after all officers enter the apartment, two EMTs arrive on scene and speak with § 87(2)(b). At timestamp 03:08, both EMTs state that § 87(2)(b) needs to go to the hospital based on the fact that she has not taken her medications in two days and that it was alleged that § 87(2)(b) was going to take her medications in a "suicidal gesture." § 87(2)(b)

§ 87(2)(b) refuses to go to the hospital. From timestamp 10:57, officers call § 87(2)(b) ex-boyfriend, who confirms his previous statement that § 87(2)(b) threatened to hurt herself. Officers then also call § 87(2)(b) uncle, who is himself a police officer. § 87(2)(b) uncle tells § 87(2)(b) that she needs to comply and go to the hospital. At timestamp 23:45, § 87(2)(b) walks into the bathroom and locks the door. Officers ask her to open the door. At 27:33, § 87(2)(b) opens the door. PO Cosgrave and PO Derkacz enter the bathroom and tell § 87(2)(b) that she needs to go to the hospital. § 87(2)(b) continues to refuse and say that she will not go to the hospital, and that she did not do anything wrong. PO Cosgrave, PO Derkacz, and PO Botta all state that the officers cannot make that determination themselves, and that § 87(2)(b) needs to be seen by a doctor. § 87(2)(b) continues to refuse (**BR 03**).

PO Botta's BWC, at timestamp 29:20, shows that after § 87(2)(b) continues to refuse to go to the hospital, PO Botta grabs § 87(2)(b) left wrist, and then circles around § 87(2)(b) and pushes her out of the bathroom by the upper left side of her back. PO Derkacz grabs § 87(2)(b) right arm and then pushes the right side of § 87(2)(b) back. § 87(2)(b) appears to try and remain in place as she continues to tell officers that she is not going anywhere. (**BR 04**).

PO Brandwein's BWC, at timestamp 42:00, shows that while PO Botta and PO Derkacz push § 87(2)(b) from behind, PO Brandwein grabs § 87(2)(b) left arm and PO Cosgrave grabs § 87(2)(b) right arm, and they pull her out of the bathroom (**BR 02**).

PO Libongco's BWC, from timestamp 42:30, shows that as officers struggle to remove § 87(2)(b) from the bathroom, PO Libongco points his Taser at § 87(2)(b) torso and says, "do not resist." He points his Taser at § 87(2)(b) for just a few seconds. § 87(2)(b) then walks into the main room and leaves the apartment with the officers (**BR 05**).

§ 87(2)(b) testified that two EMTs arrived on scene and, after discussing her medical history, an EMT told § 87(2)(b) that she had to go to the hospital. § 87(2)(b) said that she was not going to go to the hospital. PO Botta, PO Libongco, and PO Cosgrave then entered the apartment and § 87(2)(b) spoke with PO Botta, who told her that if she did not comply, they were going to drag her out in handcuffs. § 87(2)(b) was told that it was the decision of EMS for her to go to the hospital. § 87(2)(b) had the officers call her ex-boyfriend, who confirmed that § 87(2)(b) told him that she was going to hurt herself. § 87(2)(b) then had officers call her uncle, a police sergeant. § 87(2)(b) uncle told § 87(2)(b) that she had to go to the hospital. § 87(2)(b) ran to the bathroom while PO Libongco remained on the phone with her uncle. § 87(2)(b) opened the bathroom door and said that she was not going to go to the hospital. PO Botta grabbed § 87(2)(b) left arm. PO Derkacz and PO Cosgrave got behind § 87(2)(b) and pushed her. PO Libongco pulled out his Taser and pointed it at § 87(2)(b) chest. PO Botta pulled § 87(2)(b) out of the bathroom and into the preceding room and was about to handcuff her when PO Derkacz told him to stop. § 87(2)(b) then put her shoes on, grabbed her keys, and walked to the front door. Everyone exited the apartment, and § 87(2)(b) locked the door (**BR 06**).

EMS was not interviewed as their decision to remove § 87(2)(b) to the hospital was documented on officers' BWC footage.

PO Libongco testified that after officers entered § 87(2)(b) apartment, EMS arrived shortly afterwards. After briefly conferring with both § 87(2)(b) mother and ex-boyfriend, EMS determined that § 87(2)(b) needed to go to the hospital. Afterwards, officers spent nearly 30 minutes trying to convince § 87(2)(b) to go to the hospital willingly. Upon § 87(2)(b) request, officers called her uncle, a police officer. § 87(2)(b) uncle confirmed that § 87(2)(b)

§ 87(2)(b) needed to comply and go to the hospital. § 87(2)(b) then went into the bathroom and locked the door. Officers stood in the hallway in front of the bathroom for approximately 10 minutes until § 87(2)(b) opened the door. She was unwilling to leave, and PO Botta, PO Brandwein, and PO Cosgrave entered the bathroom and guided § 87(2)(b) out by the hands and elbow. Officers pushed § 87(2)(b) out of the bathroom and into the hallway as she tried to remain in place. It took officers two to three minutes to get § 87(2)(b) out of the hallway. To try and gain compliance from § 87(2)(b) PO Libongco removed the cartridge from his Taser and pointed it in her direction to show that if she continued to refuse compliance, he could use the Taser on her. § 87(2)(b) eventually left the apartment (**BR 07**).

Other officers were not interviewed in regards to this allegation as any additional testimony would not have altered the disposition.

An officer may involuntarily remove a civilian to a hospital when the officer reasonably believes that a person who is mentally ill or emotionally disturbed must be taken into protective custody because the person is conducting themselves in a manner likely to result in serious injury to themselves or others. Patrol Guide Procedure 221-13 (BR 09). A Taser, or Conducted Electrical Weapon (CEW), should only be used against person who is actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or others present. Active resisting includes physically evasive movements to defeat a member's attempt at control. A laser warning is pointing and placing the laser dot of an activated CEW on a subject in order to attempt to achieve voluntary compliance. When feasible, an officer should issue a verbal warning to the intended subject in conjunction with a laser warning. Patrol Guide Procedure 221-08 (BR 10). Active resistance includes physically evasive movements to defeat a member of the service's attempt at control, including bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody. Patrol Guide Procedure 221-02 (BR 11).

Officers and EMS were called to the scene because § 87(2)(b) allegedly expressed suicidal ideation to her ex-boyfriend. BWC shows that two EMTs spoke with § 87(2)(b) before determining that she needed to go to the hospital. Additionally, officers spoke with § 87(2)(b) ex-boyfriend over the phone, who confirmed that § 87(2)(b) expressed suicidal ideations, providing reasonable belief that § 87(2)(b) was been a threat to herself, and providing officers with cause to involuntarily remove her to a hospital as per Patrol Guide Procedure 221-13. BWC shows that from the first time EMS told § 87(2)(b) that she needed to go to the hospital, to the point at which officers physically removed § 87(2)(b) from the bathroom, approximately 26 minutes passed during which officers tried to obtain voluntary compliance from § 87(2)(b). After § 87(2)(b) retreated to the bathroom, officers waited for her to open the door and then continued to try and convince her to willingly go to the hospital. When PO Botta, PO Cosgrave, PO Brandwein, and PO Derkacz began to physically remove § 87(2)(b) from the bathroom, she continued verbally refusing to go with them, and physically braced herself enough to require four officers to remove her from the bathroom. PO Libongco then pointed his Taser at § 87(2)(b) torso, issuing a laser warning, as well as a command. This is consistent with PO Libongco's testimony that it required multiple officers to remove § 87(2)(b) from the hallway, and that PO Libongco pointed the Taser at § 87(2)(b) as a way of gaining compliance. Patrol Guide Procedure 221-08 states that a Taser should only be used against a person who is actively resisting, and a laser warning should be issued in order to attempt to achieve voluntary compliance. Patrol Guide Procedure 221-02 defines active resistance as any physically evasive movements such as bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into custody. § 87(2)(b) consistent verbal refusal to cooperate with officers, as well as her physically bracing herself, as evidenced by the need for four officers to physically remove her, amount to the definition of active resistance, § 87(2)(g).

§ 87(2)(g)

§ 87(2)(g)

Allegation (D) Abuse of Authority: Police Officer Marco Libongco threatened § 87(2)(b) with the use of force in the lobby of § 87(2)(b) in Queens.

PO Libongco's BWC shows at timestamp 44:00, § 87(2)(b) exits § 87(2)(b) and PO Libongco asks who has the keys. § 87(2)(b) turns around to lock the door and PO Libongco asks for her keys. § 87(2)(b) ignores PO Libongco and says, "don't touch me." PO Libongco tells PO Derkacz and PO Cosgrave to take the keys from § 87(2)(b). At 44:22, PO Cosgrave walks to the lobby with § 87(2)(b) and ask for her keys. In the lobby, PO Libongco asks where the keys are, and PO Cosgrave says that § 87(2)(b) is holding them. PO Libongco grabs § 87(2)(b) left wrist and tells her to give PO Cosgrave the keys. § 87(2)(b) tells PO Libongco not to touch her. At timestamp 44:25, PO Libongco points his Taser at § 87(2)(b) upper body and says, "Give her the keys now! Give her the keys! I'm tired of it." He points the Taser at § 87(2)(b) for less than five seconds and the light is not on. PO Cosgrave is able to take the keys from § 87(2)(b) right hand (BR 05).

§ 87(2)(b) alleged that as she locked her door, she felt someone pull on her arm and heard an officer say that she was not supposed to have her keys. In the lobby, she felt PO Libongco pull on her arm and turned around to see him pointing his Taser at her face, just an inch or two away from her. PO Libongco told § 87(2)(b) to give over her keys and said that he was tired of this. § 87(2)(b) then gave her keys to an officer and walked out to the ambulance (BR 06).

PO Libongco told § 87(2)(b) that the officers would hold onto her keys, as they did not want her to use them to harm herself or anyone else. As § 87(2)(b) walked down the hallway, PO Libongco asked § 87(2)(b) to hand the keys to an officer at least twice. § 87(2)(b) refused and continued walking. In the lobby, PO Libongco grabbed § 87(2)(b) hand, and again demanded that she provide her keys. § 87(2)(b) swatted away PO Libongco's forearm. PO Libongco pointed his Taser at § 87(2)(b) chest/neck area. § 87(2)(b) provided the keys, and then walked out to the ambulance. PO Libongco received training on using his Taser for compliance at some point after graduating from the academy (BR 07).

Other officers were not interviewed any additional testimony would not have altered the disposition of this allegation.

When a uniformed member to the service reasonably believes that a person who is apparently mentally ill must be taken into protective custody, they must remove property that is dangerous to life. Patrol Guide Procedure 221-13 (BR 09). A Taser, or Conducted Electrical Weapon (CEW), should only be used against a person who is actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or others present. Active resisting includes physically evasive movements to defeat a member's attempt at control. Patrol Guide Procedure 221-08 (BR 10). Passive resistance is defined as minimal physical action to prevent a member from performing their lawful duty, such as failing to comply with a lawful command. Patrol Guide Procedure 221-02 (BR 11).

BWC is consistent with both § 87(2)(b) and PO Libongco's statement that, after leaving the apartment, PO Libongco told § 87(2)(b) that she was not supposed to have her keys. In the lobby of the building, PO Libongco pointed his Taser at § 87(2)(b) and told her to hand over her keys. BWC also shows that PO Libongco grabbed § 87(2)(b) left wrist and pointed his Taser at her. After issuing the command and pointing his Taser at § 87(2)(b) PO Cosgrave obtained her keys. Although Patrol Guide Procedure 221-13 states that officers must remove property that is dangerous to life, and PO Libongco thought that § 87(2)(b) keys could have been used to harm herself or someone else, § 87(2)(b) failure to comply with the order does not rise above passive resistance. Because the use of Taser is limited to a person who is actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or others present, § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 12).
- PO Derkacz has been a member of service for two years and has been a subject in two additional CCRB complaints and two additional allegations, none of which were substantiated. § 87(2)(g)
- PO Libongco has been a member of service for 17 years and has been a subject in five additional CCRB complaints and six additional allegations, of which one was substantiated.:
 - 201804588 involved substantiated allegations of Physical Force against PO Libongco. The Board recommended Command Level Instructions and the NYPD imposed Instructions.

Mediation, Civil, and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
 - As of July 12, 2022, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this incident (BR 13).
 - [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- § 87(2)(g)

Squad: 6

Investigator:	<u>Theo Kaufman</u>	<u>Investigator Theo Kaufman</u>	<u>01/11/2023</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Jessica Peña</u>	<u>IM Jessica Peña</u>	<u>1/11/2023</u>
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date